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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. TANVIR DHANOTA, Defendant and Appellant.	H045104 (Santa Clara County Super. Ct. No. 214672)

Defendant Tanvir Dhanota challenges the denial of a motion to suppress evidence seized from his car during a warrantless vehicle search. The search followed his arrest for misrepresenting himself as a peace officer, and it was conducted by officers who had mistakenly been informed by their own records department that defendant was on post-release supervision and subject to search terms. Defendant argues he was unlawfully detained, his arrest was not supported by probable cause, and the exclusionary rule bars the use of evidence seized under an expired search condition.

We agree with the trial court's ruling that the search was lawful under the inevitable discovery doctrine. During a consensual encounter the arresting officer developed reasonable suspicion to detain defendant for being under the influence of a controlled substance. Even without any faulty information regarding defendant's supervised release status, the officer would have inevitably arrested defendant for that offense based on probable cause. The officer would have conducted a vehicle search incident to that arrest which would have expanded to a warrantless automobile search

also based on probable cause. Accordingly, we will affirm the judgment without the need to address each issue raised by defendant.

I. BACKGROUND

Defendant was contacted by Santa Clara County Sheriff's Deputy Bryan Fickes while sleeping in his car in an empty parking garage. Deputy Fickes had entered the garage looking for a vehicle involved in a hit and run accident, when he came upon defendant's car parked alongside a wall in the empty garage. After running the plates to determine whether the car was stolen, Deputy Fickes approached the car on foot to look for collision damage, and he noticed defendant sleeping in the driver's seat. Deputy Fickes woke up defendant, conversed with him for several minutes, and suspected he was under the influence of a central nervous system stimulant in violation of Health and Safety Code section 11550. The deputy conducted a records check and was informed that defendant was on post-release community supervision for transporting methamphetamine for sale. Defendant acknowledged having recently served a prison term, but he denied being on supervised release. Deputy Fickes then directed defendant to get out of the car. Defendant consented to a patdown search for weapons, and Deputy Fickes removed a Department of Corrections patch displayed in an ID holder affixed to a cord hanging from defendant's neck. Defendant was arrested for misrepresenting himself as a peace officer. His car was searched incident to the arrest and after the sheriff's office records department confirmed defendant was on post-release community supervision with search terms.

A search of the passenger compartment uncovered 8.5 grams of methamphetamine, a pipe used for smoking methamphetamine, a working digital scale, $475 in U.S. currency, a six-pack of beer with one missing bottle, and two professional grade explosives (with blast radii of approximately 200 feet). A handgun, more explosives, a CB radio, and red and blue lights that are "normally [found] inside a police car that were mounted" were found in the trunk.

A grand jury charged defendant with transporting methamphetamine while armed (Health & Saf. Code, § 11379, subd. (a), Pen. Code, § 12022, subd. (c); count 1), possessing methamphetamine for sale while armed (Health & Saf. Code, § 11378, Pen. Code, § 12022, subd. (c); count 2), possessing a firearm while under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (e); count 3), possessing a firearm as a felon (Pen. Code, § 29800, subd. (a)(1); count 4), carrying a loaded firearm with a prior felony (Pen. Code, § 25850, subd. (a); count 5), carrying a concealed firearm in a vehicle with a prior felony (Pen. Code, § 25400, subd. (a)(1); count 6), misrepresenting self as a peace officer (Pen. Code, § 538d, subd. (a), a misdemeanor; count 7), and possessing drug paraphernalia (Health & Saf. Code, §11364, a misdemeanor; count 8). It was also alleged that defendant was on bail at the time of the offenses and that he had a prior drug conviction. (Pen. Code, § 12022.1; Health & Saf. Code, § 11370.2, subd. (c).)

Defendant moved to suppress the items seized from the vehicle, arguing that his initial encounter with Deputy Fickes was an unlawful seizure, removing the patch hanging from his neck exceeded the scope of a weapons search, the arrest for misrepresenting himself as a peace officer was not supported by probable cause, and no exigent circumstances were present to support the vehicle search. He also argued that the prosecution, having learned that he was in fact not on post-release supervision when his car was searched (supervision having ended a year earlier), had failed to meet its burden to produce the source of the misinformation to avoid application of the exclusionary rule.

The trial court ruled that the initial encounter and the weapons search were consensual, and that removing the cord and patch from defendant's neck did not exceed the scope of that search. It did not reach whether the arrest for misrepresenting an officer was supported by probable cause or whether acting on misinformation regarding post-release supervision warranted application of the exclusionary rule. Instead, the trial court

ruled that the search was lawful based on Deputy Fickes's inevitable investigation related to defendant's unlawful drug use.

Defendant pleaded no contest to counts 1, 3, and 4, and to vehicle theft charged in an unrelated indictment. He was sentenced to a five-year prison term, and the remaining counts were dismissed.

II. DISCUSSION

In ruling on a motion to suppress evidence, the trial court finds the historical facts, identifies the applicable law, and determines whether the law as applied to the established facts is or is not violated. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301, overruled on another ground in *People v. Diaz* (2015) 60 Cal.4th 1176, 1190.) At issue here are the second and third inquiries which, being legal questions, we review using our independent judgment. (*Williams*, at p. 1301.)

A. THE INITIAL ENCOUNTER WAS NOT A SEIZURE

Defendant argues that he was unlawfully seized within the meaning of the Fourth Amendment when he was initially contacted by Deputy Fickes. A seizure occurs when an officer restrains a person's liberty "by means of physical force or show of authority." (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16.) It does not occur "simply because a police officer approaches an individual and asks a few questions." (*Florida v. Bostick* (1991) 501 U.S. 429, 434 (*Bostick*).) Deputy Fickes testified that he entered the parking structure because it was an unsecured garage very close to the scene of a hit-and-run accident, and a likely place for someone involved in the crime to hide a vehicle. A Dodge Charger drew his attention because it was the only car in the garage on a weekend morning when the businesses associated with the lot were closed. He did not activate his lights or siren, and he parked his patrol car without facing or blocking the Charger. He approached the car on foot to examine the front end for damage, and he noticed defendant reclined in the driver's seat, apparently sleeping. Deputy Fickes tapped his flashlight on

the passenger window and said "Hello, Sheriff's Office." Defendant immediately started talking, and he opened the passenger door at the deputy's request because the deputy could not hear what he was saying. Deputy Fickes asked defendant whether he had seen anyone come through the area on foot or in a vehicle with front end damage. Defendant was cooperative with Deputy Fickes, and he answered the deputy's questions. Deputy Fickes smelled alcohol as soon as defendant opened the door, and defendant offered that he had been sleeping there because he did not want to get a DUI. There is no evidence that the deputy physically restrained defendant or engaged in intimidating or coercive tactics engaging him in conversation. Deputy Fickes's initial encounter with defendant did not constitute a seizure, as he did not restrain defendant's liberty by means of physical force or show of authority.

Defendant likens the facts to those in *People v. Wilkins* (1986) 186 Cal.App.3d 804. After seeing the defendant and a companion slouch down in a parked car in a convenience store parking lot apparently to avoid detection, the officer in *Wilkins* parked his patrol car behind the car " 'essentially blocking [the car's] exit.' " (*Id.* at p. 807.) The officer contacted the occupants, checked for warrants, and searched the defendant after receiving confirmation that he was on probation with search terms. (*Ibid.*) Two of the justices in *Wilkins* concluded that the defendant had been seized within the meaning of the Fourth Amendment when the officer positioned his marked patrol car in a way that prevented the occupants from leaving because "a reasonable person would have believed that he was not free to leave" under those circumstances. (*Id.* at p. 809.) The instant case is readily distinguishable from *Wilkins*. Here, the deputy was unaware whether the Charger was occupied when he came upon the vehicle, and he did not position his patrol car to block the car from exiting the lot. He also did not ask defendant for identification until after developing reasonable suspicion that defendant was under the influence of alcohol.

Defendant argues "there is no such thing as a consensual encounter of a sleeping man on the bottom level of an underground parking structure," and "the only thing any reasonable person could or would do in this situation, is to entertain whatever it is the police officer wants." But defendant was in a car in a publicly accessible parking garage, and the Supreme Court has held that " 'law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [and] by putting questions to him if the person is willing to listen.' " (*Bostick, supra,* 501 U.S. at p. 434.) The Supreme Court also explained in *Bostick* that "the degree to which a reasonable person would feel that he or she could leave is not an accurate measure of the coercive effect of the encounter" when, for example, a person is seated on a bus and has no desire to leave: "[T]he mere fact that Bostick did not feel free to leave the bus does not mean that the police seized him. Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present. Bostick's movements were 'confined' in a sense, but this was the natural result of his decision to take the bus; it says nothing about whether or not the police conduct at issue was coercive." (*Id*. at pp. 435–436.) Similarly, to the extent defendant may have felt confined during the initial encounter with Deputy Fickes, that was the natural result of his decision to sleep in a car in a public garage and does not reflect a show of force by Deputy Fickes.

B. THE INEVITABLE DISCOVERY OF DEFENDANT'S DRUG USE PROVIDED A BASIS TO SEARCH THE CAR

The inevitable discovery doctrine is an exception to the exclusionary rule. Unlawfully seized evidence is not subject to suppression if the prosecution can establish that the evidence ultimately or inevitably would have been discovered by lawful means. (*Nix v. Williams* (1984) 467 U.S. 431, 444; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 62.) The trial court invoked the doctrine based on Deputy Fickes's

discovery of defendant's unlawful use of a controlled substance. Defendant argues the doctrine does not apply because Deputy Fickes lacked reasonable suspicion to detain and probable cause to arrest on that basis.

"The Fourth Amendment requires 'some minimal level of objective justification' " for detaining a person for investigative purposes. (*U.S. v. Sokolow* (1989) 490 U.S. 1, 7.) A police officer must have "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.' " (*Ibid*.) Probable cause to arrest arises only when the facts and circumstances within the officer's knowledge warrant a person of reasonable caution to believe that an offense is being committed by the person to be arrested. (*Dunaway v. New York* (1979) 442 U.S. 200, 208, fn. 9.) Probable cause to arrest also requires " 'a reasonable ground for belief' " of the person's guilt. (*Maryland v. Pringle* (2003) 540 U.S. 366, 371.)

In initially speaking with defendant, Deputy Fickes smelled alcohol emitting from the car. He asked defendant how much he had had to drink and whether he would be okay to drive. During the exchange Deputy Fickes noticed that defendant was speaking rapidly, his eyes were dilated beyond the normal range, and he appeared excessively nervous. The deputy also observed involuntary hand movements and facial twitching. Deputy Fickes was a court-recognized expert in identifying persons under the influence of methamphetamine, and he knew those behaviors to be objective signs of consuming a central nervous system stimulant such as methamphetamine. Based on those observations, he formed the belief that defendant may be under the influence of a controlled substance in violation of Health and Safety Code section 11550. The deputy's initial observations of defendant, made before defendant was asked to step out of the car, satisfy the minimal level of objective justification to detain defendant to investigate possible unlawful drug use.

The prosecution established that Deputy Fickes would have proceeded to investigate defendant for being under the influence of a controlled substance immediately

following the initial detention had he not arrested defendant for misrepresenting himself as an officer and searched defendant's car both incident to that arrest and based on the misinformation received from the sheriff's office that defendant was on post-release supervision. Deputy Fickes explained that he intended to investigate defendant for being under the influence when he asked defendant to get out of the car. But the sequence of events changed after he found the Department of Corrections patch and placed defendant under arrest. Deputy Fickes elected to delay the unlawful drug use investigation while he searched defendant's car, mindful that "the 11550 blood evidence isn't going to go anywhere."

Field tests (albeit conducted some two hours after the initial detention) supplied probable cause to arrest defendant for being under the influence of a controlled substance, independent of the preceding search and arrest. While defendant was seated in the patrol car in normal lighting conditions, Deputy Fickes measured defendant's pupil size using a department-issued pupilometer. The pupils were dilated consistent with being under the influence of a stimulant, and they constricted but quickly rebounded to the dilated state when he shined his flashlight in defendant's eyes. That rebound dilation strongly correlated with a person being under the influence of a controlled substance. Deputy Fickes also measured defendant's pulse, which was elevated and consistent with use of a stimulant. Based on the rebound dilation, the elevated pulse, and defendant's fidgeting, nervousness, and involuntary hand and mouth movements throughout the investigation, Deputy Fickes ultimately developed probable cause to arrest defendant for being under the influence of a controlled substance and search his car incident to that arrest. (*Arizona v. Gant* (2009) 556 U.S. 332, 351 [officers may search a vehicle incident to a recent occupant's arrest if "it is reasonable to believe the vehicle contains evidence of the offense of arrest"]; *People v. Nottoli* (2011) 199 Cal.App.4th 531, 553–554 [reasonable for officer to believe evidence related to being under the influence might be found in the defendant's vehicle].)

Defendant argues that the symptoms Deputy Fickes attributed to his being under the influence can be explained by other causes such as physical exertion, caffeine use, or attention deficit disorder. In so doing, defendant views each fact "in isolation, rather than as a factor in the totality of the circumstances." (*Maryland v. Pringle*, *supra*, 540 U.S. at p. 372, fn. 2.) "The crucial test for probable cause to arrest for drug use depends upon the manifestations of drug use identified by an *experienced* police officer." (*People v. Dunkel* (1977) 71 Cal.App.3d 928, 932.) Circumstances and conduct which may not alert a person of ordinary prudence to unlawful activity may be significant to an officer with extensive training and experience in detecting such conduct. (*People v. Superior Court* (*Keifer*) (1970) 3 Cal.3d 807, 827.) Here, an officer with expertise in identifying persons under the influence of controlled substances observed several objective signs of consumption of a stimulant. On this record, they supplied probable cause to believe defendant had violated Health and Safety Code section 11550.

In light of our determination that the inevitable discovery doctrine provided a basis to search defendant's car incident to an arrest for being under the influence of a controlled substance, we need not determine whether the Department of Corrections patch was lawfully seized, whether the patch supplied probable cause to arrest defendant for misrepresenting himself as a peace officer, and whether the exclusionary rule would bar the fruits of a search conducted based on misinformation related to defendant's post-release supervision. Nor is it necessary for us to address the scope of the vehicle search, as defendant does not challenge respondent's position (implicitly adopted by the trial court) that the search of the passenger compartment, which uncovered a substantial quantity of methamphetamine and a digital scale, supplied probable cause to search the trunk of the vehicle under the automobile exception to the warrant requirement. (*United States v. Ross* (1982) 456 U.S. 798, 824 [the scope of a warrantless search of an automobile "is defined by the object of the search and the places in which there is probable cause to believe that it may be found"]; *People v. Dey* (2000)

84 Cal.App.4th 1318, 1322 [probable cause to search trunk when marijuana bud found in passenger compartment]; *People v. Hunt* (1990) 225 Cal.App.3d 498, 509 [same, rock cocaine].) Defendant's complaints related to discovery are also rendered moot by this opinion.

III. DISPOSITION

The judgment is affirmed.

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Grover, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.